

AMENDED IN SENATE MAY 7, 2014
AMENDED IN SENATE APRIL 29, 2014
AMENDED IN SENATE APRIL 9, 2014
AMENDED IN SENATE MARCH 26, 2014
AMENDED IN SENATE FEBRUARY 14, 2014

SENATE BILL

No. 894

**Introduced by Senator Corbett
(Coauthor: Senator Lara)**

January 13, 2014

An act to amend Sections 1569.335 and 1569.525 of the Health and Safety Code, relating to residential care facilities for the elderly.

LEGISLATIVE COUNSEL'S DIGEST

SB 894, as amended, Corbett. Residential care facilities for the elderly: revocation of license.

Existing law, the California Residential Care Facilities for the Elderly Act, provides for the licensure and regulation of residential care facilities for the elderly. These provisions are administered by the State Department of Social Services. Violation of these provisions is a misdemeanor.

Existing law requires, if the Director of Social Services determines that it is necessary to temporarily suspend a license of a residential care facility for the elderly in order to protect the residents or clients of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety, the department to make every effort to minimize trauma for the residents. Existing law authorizes and requires the department, in the event of a temporary license suspension

or revocation, to comply with specified procedures relating to the transfer of residents, including requiring the department to contact and work with any local agency that may have placement or advocacy responsibility for the residents of a residential care facility for the elderly, as specified, to locate alternative placement sites and contact responsible relatives. Existing law requires, upon an order to revoke a license, a licensee to provide a 60-day written notice of license revocation that may lead to closure to the resident and the resident's responsible person within 24 hours of receipt of the department's order of revocation. Existing law requires a resident who transfers from the facility during that 60-day period to be entitled to a refund of preadmission fees in accordance with specified provisions.

This bill would require, if the Director of Social Services determines at any time during or following a temporary suspension or revocation of a license that there is a risk to the residents or clients of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety, the department to take any necessary action to minimize trauma for the residents, including, but not limited to, arranging for the preparation of the residents' records and medications for transfer and checking in on the status of each transferred resident within 24 hours of transfer. The bill would additionally require the department to contact the Office of the State Long-Term Care Ombudsman to locate alternative placement sites for residents. The bill would also require, upon an order to temporarily suspend a license or a final order to suspend a license, a licensee to provide a written notice of license suspension or revocation to the resident or resident's responsible person, as specified, and would require a resident who transfers due to the receipt of a notice of a temporary suspension or revocation of a license to be entitled to a refund of preadmission fees.

This bill would prohibit, upon receipt of an order to temporarily suspend or revoke a license, a licensee from accepting new residents or entering into admission agreements for new residents. The bill would generally make a licensee who fails to comply with the requirements of these provisions liable for civil penalties in the amount of \$500 per violation per day for each day that the licensee is in violation of these provisions until the violation has been corrected. The bill would authorize a current or former resident of a residential care facility for the elderly covered under these provisions to bring a civil action against any person, firm, partnership, or corporation that owns, operates,

establishes, manages, conducts, or maintains a residential care facility for the elderly who violates the specified rights of the resident.

Existing law requires the department to notify affected placement agencies and the Office of the State Long-Term Care Ombudsman whenever the department substantiates that a violation has occurred which poses a serious threat to the health and safety of any resident when the violation results in the assessment of any penalty or causes an accusation to be filed for the revocation of a license.

This bill would additionally require the department to provide the Office of the State Long-Term Care Ombudsman with a precautionary notification if the director is reasonably contemplating a temporary suspension or revocation of any license.

By expanding the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1569.335 of the Health and Safety Code
- 2 is amended to read:
- 3 1569.335. (a) The department shall provide the Office of the
- 4 State Long-Term Care Ombudsman, as defined in subdivision (c)
- 5 of Section 9701 of the Welfare and Institutions Code, with a
- 6 precautionary notification if the director is reasonably
- 7 contemplating a temporary suspension or revocation of any license,
- 8 so that the office may properly prepare to provide advocacy
- 9 services if and when necessary.
- 10 (b) The department shall notify affected public placement
- 11 agencies and the Office of the State Long-Term Care Ombudsman,
- 12 whenever the department substantiates that a violation has occurred
- 13 which poses a serious threat to the health and safety of any resident
- 14 when the violation results in the assessment of any penalty or
- 15 causes an accusation to be filed for the revocation of a license.

(c) (1) If the violation is appealed by the facility within 10 days, the department shall only notify placement agencies of the violation when the appeal has been exhausted.

(2) If the appeal process has not been completed within 60 days, the placement agency shall be notified with a notation that indicates that the case is still under appeal.

(3) The notice to each placement agency shall be updated monthly for the following 24-month period and shall include the name and location of the facility, the amount of the fine, the nature of the violation, the corrective action taken, the status of the revocation, and the resolution of the complaint.

SEC. 2. Section 1569.525 of the Health and Safety Code is amended to read:

1569.525. (a) If the director determines that it is necessary to temporarily suspend or to revoke any license of a residential care facility for the elderly in order to protect the residents or clients of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety pursuant to Section 1569.50, the department shall make every effort to minimize trauma for the residents.

(b) (1) ~~The~~ (A) *After a decision is made to temporarily suspend or to revoke the license of a residential care facility for the elderly and prior to implementing that decision, the department shall contact the both of the following:*

(i) ~~The Office of the State Long-Term Care Ombudsman and any Ombudsman.~~

(ii) ~~Any local agency that may have placement or advocacy responsibility for the residents of a residential care facility for the elderly after a decision is made to temporarily suspend or to revoke the license of the facility and prior to its implementation. The elderly.~~

(B) *The department shall work with these agencies, and the licensee if the director determines it to be appropriate, to locate alternative placement sites and to contact relatives responsible for the care of these residents.*

(2) If the director is reasonably contemplating a temporary suspension or revocation of any license, the department shall notify the Office of the State Long-Term Care Ombudsman pursuant to Section 1569.335.

1 (c) The department shall use physicians and surgeons and other
2 medical personnel deemed appropriate by the department to provide
3 onsite evaluation of the residents and assist in any transfers.

4 (d) The department shall require the licensee to prepare and
5 submit to the licensing agency a written plan for relocation and
6 compliance with the terms and conditions of the approved plans,
7 and to provide other information as necessary for the enforcement
8 of this section.

9 (e) Upon receipt of an order to temporarily suspend or revoke
10 a license, the licensee shall be prohibited from accepting new
11 residents or entering into admission agreements for new residents.

12 (f) Upon an order to temporarily suspend a license, the following
13 shall apply:

14 (1) The licensee shall provide written notice of the temporary
15 suspension to the resident and the resident's responsible person,
16 if applicable, as soon as practically possible, but no later than
17 within 24 hours of receipt of the department's temporary
18 suspension order.

19 (2) The department may secure, or permit the licensee to secure,
20 the services of a person who is not an immediate family member
21 of the licensee or an entity that is not owned by the licensee to
22 manage the day-to-day operations of the facility until the matter
23 is heard pursuant to Section 1569.50, and for at least 60 days
24 thereafter, if a proposal that includes both of the following is
25 submitted to the department as soon as practically possible
26 following the licensee's receipt of the department's temporary
27 suspension order:

28 (A) A completed "Application for a Community Care Facility
29 or Residential Care Facility for the Elderly License" form (LIC
30 200), or similar form as determined by the department, signed and
31 dated by both the licensee and the person or entity described in
32 this paragraph.

33 (B) A copy of the executed agreement between the licensee and
34 the person or entity described in this paragraph that delineates the
35 roles and responsibilities of each party and specifies that the person
36 or entity described in this paragraph shall have the full authority
37 necessary to operate the facility, in compliance with all applicable
38 laws and regulations, and without interference from the licensee.

39 (g) Upon a final order to revoke a license following any
40 applicable hearings required under this article, except when

1 following the temporary suspension of a license pursuant to Section
2 1569.50 that led to the transfer of all residents, the following shall
3 apply:

4 (1) The licensee shall provide a 60-day written notice of license
5 revocation that may lead to closure to the resident and the resident's
6 responsible person within 24 hours of receipt of the department's
7 final order of revocation.

8 (2) The department shall permit the licensee to secure the
9 services of a person who is not an immediate family member of
10 the licensee or an entity that is not owned by the licensee to manage
11 the day-to-day operations of the residential care facility for the
12 elderly for a period of at least 60 days, if a proposal that includes
13 both of the following is submitted to the department within 72
14 hours of the licensee's receipt of the department's final order of
15 revocation:

16 (A) A completed "Application for a Community Care Facility
17 or Residential Care Facility for the Elderly License" form (LIC
18 200), or similar form as determined by the department, signed and
19 dated by both the licensee and the person or entity described in
20 this paragraph.

21 (B) A copy of the executed agreement between the licensee and
22 the person or entity described in this paragraph that delineates the
23 roles and responsibilities of each party and specifies that the person
24 or entity described in this paragraph shall have the full authority
25 necessary to operate the facility, in compliance with all applicable
26 laws and regulations, and without interference from the licensee.

27 (h) (1) The person or entity described in paragraph (2) of
28 subdivision (f) or paragraph (2) of subdivision (g) shall be currently
29 licensed and in substantial compliance to operate a residential care
30 facility for the elderly that is of comparable size or greater and has
31 comparable programming to the facility. For purposes of this
32 subparagraph, the following definitions apply:

33 (A) "Comparable programming" includes, but is not limited to,
34 dementia care, hospice care, and care for residents with exempted
35 prohibited health care conditions.

36 (B) "Comparable size" means a facility capacity of 1 to 15
37 residents, 16 to 49 residents, or 50 or more residents.

38 (2) The person or entity described in paragraph (2) of
39 subdivision (f) or paragraph (2) of subdivision (g) shall not be
40 subject to the application fee specified in Section 1569.185.

1 (3) If the department denies a proposal to secure the services
2 of a person or entity pursuant to paragraph (2) of subdivision (f)
3 or paragraph (2) of subdivision (g), this denial shall not be deemed
4 a denial of a license application subject to the right to a hearing
5 under Section 1569.22 and other procedural rights under Section
6 1569.51.

7 (i) (1) Notwithstanding Section 1569.651 or any other law, for
8 paid preadmission fees, a resident who transfers from the facility
9 due to the notice of a temporary suspension or revocation of a
10 license pursuant to this section is entitled to a refund in accordance
11 with all of the following:

12 (A) A 100-percent refund if preadmission fees were paid within
13 six months of either notice required by this section.

14 (B) A 75-percent refund if preadmission fees were paid more
15 than 6 months, but not more than 12 months, before either notice
16 required by this section.

17 (C) A 50-percent refund if preadmission fees were paid more
18 than 12 months, but not more than 18 months, before either notice
19 required by this section.

20 (D) A 25-percent refund if preadmission fees were paid more
21 than 18 months, but not more than 25 months, before either notice
22 required by this section.

23 (2) No preadmission fee refund is required if preadmission fees
24 were paid 25 months or more before either notice required by this
25 section.

26 (3) The preadmission fee refund required by this paragraph shall
27 be paid within 15 days of issuing either notice required by this
28 section. In lieu of the refund, the resident may request that the
29 licensee provide a credit toward the resident's monthly fee
30 obligation in an amount equal to the preadmission fee refund due.

31 (4) If a resident transfers from the facility due to the revocation
32 of a license, and the resident gives notice at least five days before
33 leaving the facility, or if the transfer is due to a temporary
34 suspension of the license order, the licensee shall refund to the
35 resident or his or her legal representative a proportional per diem
36 amount of any prepaid monthly fees at the time the resident leaves
37 the facility and the unit is vacated. Otherwise the licensee shall
38 pay the refund within seven days from the date that the resident
39 leaves the facility and the unit is vacated.

(j) Within 24 hours after each resident who is transferring pursuant to these provisions has left the facility, the licensee that had his or her license temporarily suspended or revoked shall, based on information provided by the resident or the resident's responsible person, submit a final list of names and new locations of all residents to the department and the local ombudsman program.

(k) If at any point during or following a temporary suspension or revocation of a license the director determines that there is a risk to the residents of a facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety, the department shall take any necessary action to minimize trauma for the residents, including, but not limited to, all of the following:

(1) Contact any local agency that may have placement or advocacy responsibility for the residents, and work with those agencies to locate alternative placement sites.

(2) Contact the residents' relatives, legal representatives, authorized agents in a health care directive, or responsible parties.

(3) Assist in the transfer of residents, and, if necessary, arrange or coordinate transportation.

(4) Provide onsite evaluation of the residents and use any medical personnel deemed appropriate by the department to provide onsite evaluation of the residents and assist in any transfers.

(5) Arrange for or coordinate care and supervision.

(6) Arrange for the distribution of medications.

(7) Arrange for the preparation and service of meals and snacks.

(8) Arrange for the preparation of the residents' records and medications for transfer of each resident.

(9) Assist in any way necessary to facilitate a safe transfer of all residents.

(10) Check on the status of each transferred resident within 24 hours of transfer.

(l) The participation of the department and local agencies in the relocation of residents from a residential care facility for the elderly shall not relieve the licensee of any responsibility under this section. A licensee that fails to comply with the requirements of this section shall be required to reimburse the department and local agencies for the cost of providing these services. If the licensee fails to provide the services required in this section, the department shall request that the Attorney General's office, the city attorney's

1 office, or the local district attorney's office seek injunctive relief
2 and damages.

3 (m) Notwithstanding Section 1569.49, a licensee who fails to
4 comply with the requirements of this section shall be liable for
5 civil penalties in the amount of five hundred dollars (\$500) per
6 violation per day for each day that the licensee is in violation of
7 this section, until the violation has been corrected. The civil
8 penalties shall be issued immediately following the written notice
9 of violation.

10 (n) A current or former resident of a residential care facility for
11 the elderly covered under this section may bring a civil action
12 against any person, firm, partnership, or corporation that owns,
13 operates, establishes, manages, conducts, or maintains a residential
14 care facility for the elderly that violates the rights of the resident,
15 as set forth in this section. Any person, firm, partnership, or
16 corporation that owns, operates, establishes, manages, conducts,
17 or maintains a residential care facility for the elderly that violates
18 this section shall be responsible for the acts of the facility
19 employees in violating this section and shall be liable for costs
20 and attorney's fees. The residential care facility for the elderly
21 may also be enjoined from permitting the violation to continue.
22 The remedies specified in this section shall be in addition to any
23 other remedy provided by law.

24 (o) This section shall not preclude the department from
25 amending the effective date in the order of the suspension or
26 revocation of a license and closing the facility, or from pursuing
27 any other available remedies if necessary to protect the health and
28 safety of the residents in care.

29 SEC. 3. No reimbursement is required by this act pursuant to
30 Section 6 of Article XIII B of the California Constitution because
31 the only costs that may be incurred by a local agency or school
32 district will be incurred because this act creates a new crime or
33 infraction, eliminates a crime or infraction, or changes the penalty
34 for a crime or infraction, within the meaning of Section 17556 of
35 the Government Code, or changes the definition of a crime within
36 the meaning of Section 6 of Article XIII B of the California
37 Constitution.